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February 24, 2011

The Honorable Robert E. Cooper, Jr.
Attorney General and Reporter
State of Tennessee
425 Fifth Avenue, North
Second Floor
Nashville, Tennessee 37243

Dear General Cooper:

The opinion, No. 11-14, issued by your office on February 8, 2011, said that the Municipal Electric Plant Law of 1935, Tenn. Code Ann. § 7-52-101, *et seq.*, is the law that governs the Clarksville Department of Electricity Lightband. TCA § 7-52-107(b) and TCA § 7-52-108 provides for the creation of a board of public utilities and the term of board members.

TCA § 7-52-107(b) provides that:

The board shall be created in the following manner: at the time the governing body of a municipality issuing bonds under this part determines that a majority of the qualified voters voting on the election resolution have assented to the bond issue for the acquisition of an electric plant, the chief executive officer of the municipality shall, or if no such bonds are issued, or if the municipality employs a city-manager or has a population of less than two thousand (2,000), then at any time the chief executive officer may, with the consent of the governing body of the municipality, appoint two (2) or four (4) persons from among the property holders of such municipality who are residents of the municipality and have resided therein for not less than one (1) year next preceding the date of appointment to such board. The board of a municipal electric system may consist of two (2) or four (4) persons who have been for not less than one (1) year preceding the appointment both a customer of the municipal electric system and a resident of the county wherein such municipality is located. No regular compensated officer or employee of a

municipality shall be eligible for such appointment until at least one (1) year after the expiration of the term of such person's public office.

TCA § 7-52-108 provides that:

7-52-108. Terms of board members Official representative.

- (a) The original appointees, if two (2) are appointed, shall serve two (2) and four (4) years respectively, or if four (4) are appointed, shall serve for one (1), two (2), three (3) and four (4) years respectively, from July 1 next succeeding the date of appointment, as the chief executive officer shall designate.
- (c) Successors to retiring members so appointed shall be appointed for a term of four (4) years in the same manner, prior to the expiration of the term of office of the retiring member.
- (d) In addition to the members so appointed, such chief executive officer shall also, with the consent of the governing body of the municipality, designate a member of such governing body, or, in the chief executive officer's discretion, the city manager, to serve as a third or fifth member of the board, as the case may be. The term of such member shall be for such time as the appointing officer may fix, but in no event to extend beyond the member's term of office in such governing body or the member's employment as city manager, as the case may be. Appointments to complete unexpired terms of office shall be made in the same manner as original appointments.

The current Clarksville electric power board is comprised of seven (7) members, all of whom are were appointed for three (3) year terms. pursuant to Title XIII, Chapter 1, Section 13-103, of the Charter of the City of Clarksville.

The Charter of the City of Clarksville is a private act charter that provides in pertinent part as follows:

ARTICLE VI. MISCELLANEOUS

Section 1. Supervisory boards.

The city council may elect or create supervisory boards of not less than three (3) nor more than seven (7) members to be appointed or elected by such council. No member of such boards shall be appointed or elected for a longer period than three (3) years. The members of the first board may be appointed or elected to serve for different periods so that the terms of office of its members shall not all expire the same year. To such extent and in such manner as the city council shall by ordinance determine, these boards shall have general supervision, management and control of the construction, maintenance and operation of such plants, systems, lines and additions, extension and improvements

thereto, and the purchase, sale and resale of electric power, gas, water and furnishing sewerage disposal services, and the operation of recreational facilities.

Section 13-103(a) of the Official Code of the City of Clarksville, enacted pursuant to the above Charter provision, currently provides that:

Section 13-103(a). *Number.* The electric power board shall be composed of seven (7) members.
(Ord. No. 27-2009-10, 9-3-09)

Section 13-103(d) of the Official Code of the City of Clarksville, enacted pursuant to the above charter provision, currently provides that:

Section 3-103(d). *Term.* Members of the board shall serve a term of three (3) years.
(Ord. No. 27-2009-10, 9-3-09)

As a result of your prior Opinion (No. 11-14) where you opined that a general Charter provision was insufficient to modify the MEPL, we would appreciate your office rendering this supplemental opinion to clarify the following questions that involve the same Charter provision.

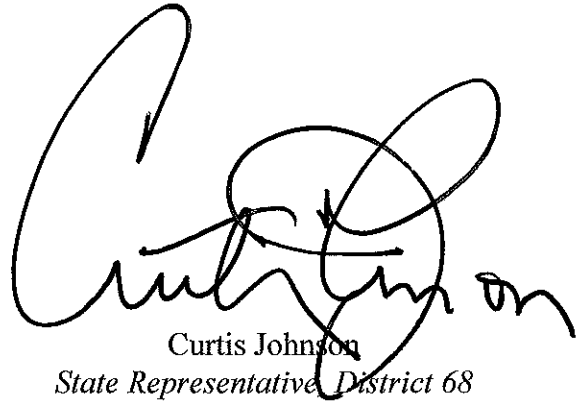
1. Whether a board of a municipal electric company is properly constituted when it is formed under and operating pursuant to the Municipal Electric Plant Law of 1935 and is comprised of seven (7) members, appointed for three (3) year terms, none of whom is a member of the municipal governing body?
2. If the board is not properly constituted is there a specific procedure for bringing the board within compliance under Tennessee law?

Thank you for your consideration of our request and for your prompt response on the previous opinion. Your earliest attention to this matter and expedited reply will be greatly appreciated.

Sincerely,



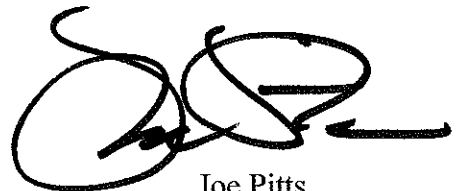
Tim Barnes
State Senator, District 22



Curtis Johnson
State Representative, District 68



Phillip Johnson
State Representative, District 78



Joe Pitts
State Representative, District 67

TB/mc

Cc: Mayor Kim McMillan
Mr. Lance Baker, Clarksville City Attorney
Mr. Mark Hicks, Clarksville City Information Director
Clarksville City Council